

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0801.01 Richard Sweetman x4333

SENATE BILL 22-198

SENATE SPONSORSHIP

Fenberg and Scott,

HOUSE SPONSORSHIP

Weissman and Will,

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO ADDRESS ORPHANED WELLS IN**
102 **COLORADO, AND, IN CONNECTION THEREWITH, CREATING THE**
103 **ORPHANED WELLS MITIGATION ENTERPRISE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates the orphaned wells mitigation enterprise (enterprise) in the department of natural resources for the purpose of:

- Plugging, reclaiming, and remediating orphaned wells located in the state for which no owner or operator can be found or for which the owner or operator is unwilling or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
2nd Reading Unamended
April 27, 2022

unable to pay the costs of plugging and abandoning the well;

- Ensuring that the costs associated with the plugging, reclaiming, and remediating of orphaned wells are borne by operators in the form of mitigation fees;
- Determining the amounts of mitigation fees; and
- Imposing and collecting mitigation fees.

On or before August 1, 2022; on or before April 30, 2023; and on or before April 30 each year thereafter, each operator shall pay a mitigation fee to the enterprise for each well that has been spud but is not yet plugged and abandoned, in accordance with rules promulgated by the Colorado oil and gas conservation commission (commission), in the following amounts:

- For operators with production that is equal to or less than a threshold to be determined by rules of the commission, \$125 for each well; or
- For operators with production that exceeds a threshold to be determined by rules of the commission, \$225 for each well.

Money collected as mitigation fees is credited to the orphaned wells mitigation enterprise cash fund (fund), which is created in the bill.

The bill also creates the orphaned wells mitigation enterprise board (enterprise board) and requires the enterprise board to administer the enterprise and, at least annually, to:

- Consider whether the mitigation fee amounts should be increased or reduced, based on current circumstances and reasonably anticipated future expenditures from the fund;
- If the enterprise board determines that an increase or reduction of the mitigation fee amounts is warranted, adjust the mitigation fee amounts; and
- Advise the commission of the outcome of the enterprise board's deliberations.

The commission may promulgate rules as necessary to implement the enterprise.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Orphaned wells present significant potential for adverse
5 impacts to public health, safety, and welfare, as well as to the

1 environment and to wildlife resources; and

2 (b) It is necessary, appropriate, and in the best interests of oil and
3 gas well operators for the state to ensure that orphaned wells and
4 associated facilities are plugged, reclaimed, and remediated in a timely
5 manner.

6 (2) The general assembly also finds that:

7 (a) Current law authorizes the Colorado oil and gas conservation
8 commission (commission) to require operators to provide and
9 demonstrate certain financial assurances in order to plug, reclaim, and
10 remediate orphaned wells; and

11 (b) The existing statutory and rule-based mechanisms provided for
12 such financial assurances may not provide sufficient funding to plug,
13 reclaim, and remediate orphaned wells in all circumstances.

14 (3) Now, therefore, the general assembly declares that:

15 (a) It is in the public interest to create an enterprise within the
16 department of natural resources that is solely committed to the plugging,
17 reclaiming, and remediating of orphaned wells;

18 (b) The activities of the orphaned wells mitigation enterprise
19 (enterprise) shall be funded by revenue generated from mitigation fees
20 imposed upon, and paid by, operators of oil and gas wells in Colorado;

21 (c) It is appropriate that operators should pay such mitigation fees,
22 as operators are the direct beneficiaries of the service provided by the
23 enterprise, which is the plugging, reclaiming, and remediating of
24 orphaned wells;

25 (d) Operators benefit from the plugging, reclaiming, and
26 remediating services provided by the enterprise pursuant to this act
27 because such services allow operators to operate oil and gas wells in

1 Colorado despite the risk that some wells will be orphaned;

2 (e) Operators also benefit from the service provided by the
3 enterprise because without such service, it may be necessary to require
4 operators to submit significantly higher amounts of financial assurance
5 to the commission to ensure that the public does not become responsible
6 for paying the costs of plugging, reclaiming, and remediating orphaned
7 wells;

8 (f) Consistent with the determination of the Colorado supreme
9 court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo.
10 1995), that the power to impose taxes is inconsistent with enterprise status
11 under section 20 of article X of the state constitution, and in accordance
12 with the determination of the Colorado supreme court in *Colorado Union
13 of Taxpayers Foundation v. City of Aspen*, 2018 CO 36, the general
14 assembly concludes that the mitigation fees are fees, and the enterprise
15 operates as a business, because:

16 (I) By providing financing for plugging, reclaiming, and
17 remediating services as authorized by this section, this enterprise provides
18 a benefit to operators when orphaned wells are plugged, reclaimed, and
19 remediated;

20 (II) The mitigation fee is imposed for the specific purpose of
21 allowing the enterprise to finance plugging, reclaiming, and remediating
22 services, which allow operators to operate oil and gas wells in Colorado
23 despite the risk of wells being orphaned;

24 (III) The mitigation fee is imposed for the specific purpose of
25 allowing the enterprise to finance plugging, reclaiming, and remediating
26 services, which reduces the total amount of financial assurance that
27 operators must provide in order to operate in Colorado; and

1 (IV) The mitigation fee is collected in amounts that are reasonably
2 calculated based on the impacts caused by fee payers and the benefits
3 enjoyed by fee payers; and

4 (g) So long as the enterprise qualifies as an enterprise for purposes
5 of section 20 of article X of the state constitution, the revenue from the
6 mitigation fees collected by the enterprise is not state fiscal year
7 spending, as defined in section 24-77-102 (17), Colorado Revised
8 Statutes, or state revenues, as defined in section 24-77-103.6 (6)(c),
9 Colorado Revised Statutes, and does not count against either the state
10 fiscal year spending limit imposed by section 20 of article X of the state
11 constitution or the excess state revenues cap, as defined in section
12 24-77-103.6 (6)(b)(I)(G), Colorado Revised Statutes.

13 **SECTION 2.** In Colorado Revised Statutes, **add** 34-60-132 as
14 follows:

15 **34-60-132. Orphaned wells mitigation enterprise - creation -**
16 **powers and duties - enterprise board created - mitigation fees - cash**
17 **fund created - rules - definitions - repeal. (1) Enterprise created.**

18 (a) THE ORPHANED WELLS MITIGATION ENTERPRISE IS CREATED IN THE
19 DEPARTMENT FOR THE PURPOSE OF:

20 (I) IMPOSING AND COLLECTING MITIGATION FEES;

21 (II) FUNDING THE PLUGGING, RECLAIMING, AND REMEDIATING OF
22 ORPHANED WELLS IN THE STATE;

23 (III) ENSURING THAT THE COSTS ASSOCIATED WITH PLUGGING,
24 RECLAIMING, AND REMEDIATING ORPHANED WELLS ARE BORNE BY
25 OPERATORS IN THE FORM OF MITIGATION FEES; AND

26 (IV) DETERMINING THE AMOUNT OF MITIGATION FEES.

27 (b) THE ENTERPRISE BOARD, IN CONSULTATION WITH THE

1 COMMISSION, SHALL ADMINISTER THE ENTERPRISE IN ACCORDANCE WITH
2 THIS SECTION.

3 (c) (I) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR
4 PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO
5 LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND
6 RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS, AS
7 DEFINED IN SECTION 24-77-102 (7), FROM ALL COLORADO STATE AND
8 LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN
9 ENTERPRISE, THE ENTERPRISE IS NOT A DISTRICT FOR PURPOSES OF SECTION
10 20 OF ARTICLE X OF THE STATE CONSTITUTION.

11 (II) THE ENTERPRISE IS AUTHORIZED TO ISSUE REVENUE BONDS FOR
12 THE EXPENSES OF THE ENTERPRISE, SECURED BY REVENUE OF THE
13 ENTERPRISE.

14 (2) **Powers and duties.** IN ADDITION TO ANY OTHER POWERS AND
15 DUTIES SPECIFIED IN THIS SECTION, THE ENTERPRISE BOARD HAS THE
16 FOLLOWING GENERAL POWERS AND DUTIES ON BEHALF OF THE
17 ENTERPRISE:

- 18 (a) TO ADOPT PROCEDURES FOR CONDUCTING ITS AFFAIRS;
- 19 (b) TO ACQUIRE, HOLD TITLE TO, AND DISPOSE OF REAL AND
20 PERSONAL PROPERTY;
- 21 (c) IN CONSULTATION WITH THE DIRECTOR OF THE COMMISSION OR
22 THE DIRECTOR'S DESIGNEE, TO EMPLOY AND SUPERVISE INDIVIDUALS,
23 PROFESSIONAL CONSULTANTS, AND CONTRACTORS AS ARE NECESSARY IN
24 ITS JUDGMENT TO CARRY OUT ITS BUSINESS PURPOSES;
- 25 (d) TO CONTRACT WITH ANY PUBLIC OR PRIVATE ENTITY,
26 INCLUDING STATE AGENCIES, CONSULTANTS, AND THE ATTORNEY
27 GENERAL'S OFFICE, FOR PROFESSIONAL AND TECHNICAL ASSISTANCE,

1 OFFICE SPACE AND ADMINISTRATIVE SERVICES, ADVICE, AND OTHER
2 SERVICES RELATED TO THE CONDUCT OF THE AFFAIRS OF THE ENTERPRISE;

3 (e) TO SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, DONATIONS, OR
4 OTHER PAYMENTS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES
5 OF THIS SECTION, SO LONG AS THE TOTAL AMOUNT OF ALL GRANTS FROM
6 COLORADO STATE AND LOCAL GOVERNMENTS RECEIVED IN ANY STATE
7 FISCAL YEAR IS LESS THAN TEN PERCENT OF THE ENTERPRISE'S TOTAL
8 ANNUAL REVENUE FOR THE STATE FISCAL YEAR. THE ENTERPRISE SHALL
9 TRANSMIT ANY MONEY RECEIVED THROUGH GIFTS, GRANTS, DONATIONS,
10 OR OTHER PAYMENTS TO THE STATE TREASURER, WHO SHALL CREDIT THE
11 MONEY TO THE FUND.

12 (f) TO HAVE AND EXERCISE ALL RIGHTS AND POWERS NECESSARY
13 OR INCIDENTAL TO OR IMPLIED FROM THE SPECIFIC POWERS AND DUTIES
14 GRANTED BY THIS SECTION.

15 (3) **Enterprise board created - membership - repeal.** (a) THE
16 ORPHANED WELLS MITIGATION ENTERPRISE BOARD IS CREATED TO
17 ADMINISTER THE ENTERPRISE. THE ENTERPRISE BOARD INCLUDES THE
18 FOLLOWING FIVE MEMBERS:

19 (I) THE CHAIR OF THE COMMISSION;

20 (II) THE DIRECTOR OF THE COMMISSION OR THE DIRECTOR'S
21 DESIGNEE;

22 (III) AN INDIVIDUAL WITH SUBSTANTIAL EXPERIENCE IN THE OIL
23 AND GAS INDUSTRY, TO BE APPOINTED BY THE GOVERNOR AND CONFIRMED
24 BY THE SENATE;

25 (IV) A LOCAL GOVERNMENT OFFICIAL, PREFERABLY FROM A
26 JURISDICTION THAT HAS OIL AND GAS DEVELOPMENT AND ORPHANED
27 WELLS, TO BE APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE

1 SENATE; AND

2 (V) AN INDIVIDUAL WITH FORMAL TRAINING OR SUBSTANTIAL
3 EXPERIENCE IN LAND RECLAMATION PROJECTS, TO BE APPOINTED BY THE
4 GOVERNOR AND CONFIRMED BY THE SENATE.

5 (b) (I) THE GOVERNOR SHALL APPOINT THE INITIAL MEMBERS OF
6 THE ENTERPRISE BOARD PURSUANT TO SUBSECTIONS (3)(a)(III), (3)(a)(IV),
7 AND (3)(a)(V) OF THIS SECTION ON OR BEFORE SEPTEMBER 1, 2022.

8 (II) THIS SUBSECTION (3)(b) IS REPEALED, EFFECTIVE JULY 1, 2023.

9 (c) THE MEMBERS OF THE ENTERPRISE BOARD DESCRIBED IN
10 SUBSECTIONS (3)(a)(III), (3)(a)(IV), AND (3)(a)(V) OF THIS SECTION SHALL
11 EACH SERVE TERMS OF THREE YEARS; EXCEPT THAT THE INITIAL TERM OF
12 THE MEMBER APPOINTED PURSUANT TO SUBSECTION (3)(a)(III) OF THIS
13 SECTION IS ONE YEAR, AND THE INITIAL TERM OF THE MEMBER APPOINTED
14 PURSUANT TO SUBSECTION (3)(a)(IV) OF THIS SECTION IS TWO YEARS. IN
15 THE EVENT OF A VACANCY, THE GOVERNOR MAY APPOINT AN INDIVIDUAL
16 TO COMPLETE THE TERM OF THE MEMBER WHOSE SEAT HAS BECOME
17 VACANT.

18 (d) AN INDIVIDUAL MAY BE APPOINTED AS A MEMBER OF THE
19 ENTERPRISE BOARD PURSUANT TO SUBSECTION (3)(a)(III), (3)(a)(IV), OR
20 (3)(a)(V) OF THIS SECTION AN UNLIMITED NUMBER OF TIMES.

21 (e) ENTERPRISE BOARD MEMBERS SERVING PURSUANT TO
22 SUBSECTIONS (3)(a)(III), (3)(a)(IV), AND (3)(a)(V) OF THIS SECTION MAY
23 RECEIVE COMPENSATION FROM THE DEPARTMENT ON A PER DIEM BASIS
24 FOR REASONABLE EXPENSES ACTUALLY INCURRED IN THE PERFORMANCE
25 OF DUTIES REQUIRED OF ENTERPRISE BOARD MEMBERS UNDER THIS
26 SECTION.

27 (f) THE GOVERNOR SHALL SELECT A MEMBER OF THE ENTERPRISE

1 BOARD TO SERVE AS CHAIR OF THE ENTERPRISE BOARD.

2 (4) **Enterprise board - duties.** IN ADDITION TO ADMINISTERING
3 THE ENTERPRISE, AT LEAST ANNUALLY, THE ENTERPRISE BOARD SHALL:

4 (a) CONSIDER WHETHER THE AMOUNTS OF THE MITIGATION FEES
5 SHOULD BE INCREASED OR REDUCED, BASED ON CURRENT CIRCUMSTANCES
6 AND REASONABLY ANTICIPATED FUTURE EXPENDITURES FROM THE FUND;

7 (b) IF THE ENTERPRISE BOARD DETERMINES THAT AN INCREASE OR
8 REDUCTION OF THE MITIGATION FEE AMOUNTS IS WARRANTED, ADJUST THE
9 MITIGATION FEE AMOUNTS; EXCEPT THAT THE ENTERPRISE BOARD SHALL
10 NOT SET THE FEE AMOUNTS IN AN AMOUNT THAT RESULTS IN A VIOLATION
11 OF SUBSECTION (6)(b) OF THIS SECTION; AND

12 (c) ADVISE THE COMMISSION OF THE OUTCOME OF THE ENTERPRISE
13 BOARD'S DELIBERATIONS PURSUANT TO THIS SUBSECTION (4).

14 (5) **Mitigation fees.** (a) ON OR BEFORE AUGUST 1, 2022; ON OR
15 BEFORE APRIL 30, 2023; AND ON OR BEFORE APRIL 30 EACH YEAR
16 THEREAFTER, EACH OPERATOR SHALL PAY A MITIGATION FEE TO THE
17 ENTERPRISE FOR EACH WELL OF AN OPERATOR THAT HAS BEEN SPUD BUT
18 IS NOT YET PLUGGED AND ABANDONED, IN ACCORDANCE WITH RULES OF
19 THE COMMISSION. MITIGATION FEES DUE BY AUGUST 1, 2022, SHALL BE
20 PAID IN THE FOLLOWING AMOUNTS:

21 (I) FOR OPERATORS WITH PRODUCTION THAT IS EQUAL TO OR LESS
22 THAN A THRESHOLD TO BE DETERMINED BY RULES OF THE COMMISSION,
23 ONE HUNDRED TWENTY-FIVE DOLLARS FOR EACH WELL; AND

24 (II) FOR OPERATORS WITH PRODUCTION THAT EXCEEDS A
25 THRESHOLD TO BE DETERMINED BY RULES OF THE COMMISSION, TWO
26 HUNDRED TWENTY-FIVE DOLLARS FOR EACH WELL.

27 (b) MITIGATION FEES PAID AFTER AUGUST 1, 2022, SHALL BE PAID

1 IN THE AMOUNTS DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION, AS
2 SUCH AMOUNTS MAY BE ADJUSTED BY THE ENTERPRISE BOARD PURSUANT
3 TO SUBSECTION (4) OF THIS SECTION.

4 (c) THE ENTERPRISE SHALL TRANSFER ALL MONEY COLLECTED AS
5 MITIGATION FEES PURSUANT TO THIS SUBSECTION (5) TO THE STATE
6 TREASURER, WHO SHALL CREDIT THE MONEY TO THE FUND.

7 (6) **Cash fund.** (a) THE ORPHANED WELLS MITIGATION
8 ENTERPRISE CASH FUND IS CREATED IN THE STATE TREASURY. THE FUND
9 CONSISTS OF:

10 (I) MONEY RECEIVED AS MITIGATION FEES;

11 (II) ANY MONEY RECEIVED FROM THE ISSUANCE OF REVENUE
12 BONDS, AS DESCRIBED IN SUBSECTION (1)(c)(II) OF THIS SECTION;

13 (III) ANY GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO
14 SUBSECTION (2)(e) OF THIS SECTION; AND

15 (IV) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY
16 APPROPRIATE OR TRANSFER TO THE FUND.

17 (b) THE TOTAL AMOUNT OF MONEY CREDITED TO THE FUND AS
18 MITIGATION FEES MAY NOT EXCEED ONE HUNDRED MILLION DOLLARS IN
19 THE FIRST FIVE FISCAL YEARS OF THE ENTERPRISE, BEGINNING WITH THE
20 2022-23 STATE FISCAL YEAR.

21 (c) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
22 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
23 FUND TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEY
24 REMAINING IN THE FUND AT THE END OF A FISCAL YEAR REMAINS IN THE
25 FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL
26 FUND.

27 (d) MONEY CREDITED TO THE FUND IS CONTINUOUSLY

1 APPROPRIATED TO THE FUND FOR USE BY THE ENTERPRISE AND SHALL BE
2 EXPENDED TO:

3 (I) PROVIDE PLUGGING, RECLAIMING, AND REMEDIATING SERVICES
4 AT THE REQUEST OF THE DIRECTOR OF THE COMMISSION;

5 (II) PAY THE ENTERPRISE'S REASONABLE AND NECESSARY
6 OPERATING EXPENSES; AND

7 (III) OTHERWISE EXERCISE THE ENTERPRISE'S POWERS AND
8 PERFORM ITS DUTIES AS AUTHORIZED BY THIS SECTION.

9 (7) **Rules.** THE COMMISSION SHALL PROMULGATE RULES FOR THE
10 IMPLEMENTATION OF SUBSECTION (5)(a) OF THIS SECTION AND AS MAY BE
11 OTHERWISE NECESSARY TO IMPLEMENT THIS SECTION.

12 (8) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
13 OTHERWISE REQUIRES:

14 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL
15 RESOURCES.

16 (b) "ENTERPRISE" MEANS THE ORPHANED WELLS MITIGATION
17 ENTERPRISE CREATED IN SUBSECTION (1) OF THIS SECTION.

18 (c) "ENTERPRISE BOARD" MEANS THE ORPHANED WELLS
19 MITIGATION ENTERPRISE BOARD CREATED IN SUBSECTION (3) OF THIS
20 SECTION.

21 (d) "FUND" MEANS THE ORPHANED WELLS MITIGATION ENTERPRISE
22 CASH FUND CREATED IN SUBSECTION (6) OF THIS SECTION.

23 (e) "MITIGATION FEE" MEANS A MITIGATION FEE AUTHORIZED AND
24 IMPOSED PURSUANT TO SUBSECTION (5) OF THIS SECTION.

25 (f) "ORPHANED WELL" MEANS AN OIL AND GAS WELL, LOCATION,
26 OR FACILITY IN THE STATE FOR WHICH NO OWNER OR OPERATOR CAN BE
27 FOUND OR THE OWNER OR OPERATOR IS UNWILLING OR UNABLE TO PAY

1 THE COSTS OF PLUGGING, RECLAIMING, AND REMEDIATING.

2 **SECTION 3. Effective date.** This act takes effect July 1, 2022.

3 **SECTION 4. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, or safety.